

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLD TRADE CENTER DISASTER
SITE LITIGATION

X
: **ORDER REGULATING**
: **DECEDENTS' CASES**

21 MC 100 (AKH)
21 MC 102
21 MC 103

IN RE LOWER MANHATTAN DISASTER
SITE LITIGATION

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IN RE COMBINED WORLD TRADE CENTER
AND LOWER MANHATTAN DISASTER SITE
LITIGATION

ALVIN K. HELLERSTEIN, U.S.D.J.:

Special Counsel appointed by my order of November 24, 2010, has identified thirteen cases eligible to settle under the Settlement Process Agreement, as Amended (“SPA”) but where the named Plaintiffs have died. In four of these, an executor or administrator has been appointed to represent the decedents’ estates. In the other nine, no such appointment has been made.

Federal Rule of Civil Procedure 25(a)(1) provides that upon death, a successor plaintiff must be substituted for the decedent. If the substitution does not occur within ninety days of the notice of death, the case must be dismissed. The rule provides,

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1).

Table A, attached to this Order, identifies the four cases in which executors or administrators were appointed and states whether in those cases the parties have opted to settle, continue without settlement, or dismiss. A motion for substitution of the administrators and executors must be filed in each of these cases by January 20, 2011, and the decision to settle, continue without settlement, or dismiss must be ratified in that motion by the administrator or executor. In addition, in the case of the party wishing to settle, the settlement and release documents required by the SPA must be executed and delivered to the Allocation Neutral by January 20, 2011. Failure to file a timely motion—and, in the case of the settling party, to timely execute the proper settlement documents—will be cause for dismissal with prejudice.

In the nine remaining cases, no administrator or executor has been appointed.

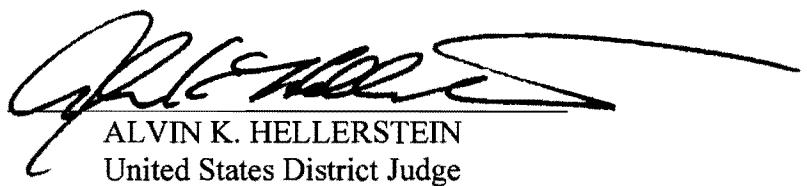
In four of these nine cases, the decedents' next of kin have failed or refused to communicate with both the counsel who represented the decedents and Special Counsel. These four cases, identified in Table B-1, are dismissed with prejudice and without costs, for the reasons and under the terms provided in my order of December 30, 2010. See Order Dismissing Cases with Prejudice for Failure to Prosecute, 21 MC 100 et al., Doc. No. 2268 (S.D.N.Y. Dec. 30, 2010).

In another four of these nine cases, the next of kin, identified in Table B-2, have expressed an intention to dismiss with prejudice, and have also advised that they do not plan to incur the expense and bother of having an administrator or executor appointed. These cases are dismissed with prejudice and without costs, for the reasons and under the terms set forth in my order of December 30, 2010. Order Dismissing Cases with Prejudice, 21 MC 100 et al., Doc. No. 2267 (S.D.N.Y. Dec. 30, 2010).

In the final case, identified in Table B-3, the next of kin has expressed the intention to continue with the case. In this case, a motion for substitution of the administrator or executor must be filed and the decision of the next of kin ratified. Failure to effect such substitution within ninety days will be cause for dismissal of the action with prejudice.

SO ORDERED.

Dated: January 11, 2011
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge

TABLE A

Plaintiff Name	Representative	Response
Frank Langan	Howard Brewer	Discontinue - Verbal
Giovanni Leone	Lucia Eagers	Opt In - Verbal
Robert Schor	Michele Schor	Opt out - verbal
Joseph Trembone	Maria Trembone	Opt out - verbal

TABLE B-1

Plaintiff Name	Representative
Leslie Huggins	Michelle Huggins
Edward Mauro	Louis Mauro
George McGrath	N/A
Robert Mehmel	Lisa Millwood

TABLE B-2

Plaintiff Name	Representative
Christopher Fanning	Leslie A. Fanning
Matthew Gilmartin	Helen Gilmartin
Thomas Harrigan	Thomas Harrigan Sr.
Mark Mandel	Lynn Mandel

TABLE B-3

Plaintiff Name	Representative
Edward M. Ferraro	Rosa M. Ferraro